

22-2-00305-21
CMP 2
Complaint
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SUPERIOR COURT
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

GENEVIEVE T. PORTER
and STEVEN PORTER,
Plaintiffs,

No. **22-2-00305-21**

COMPLAINT FOR PERSONAL
INJURIES

vs.

WALMART INC., a Delaware corporation,
JOHN DOE MANAGER and JANE DOE
MANAGER, husband and
wife; JANE DOE ASSISTANT
MANAGER and JOHN DOE ASSISTANT
MANAGER, wife and husband, and "JOHN
DOE EMPLOYEES 1 -5",

Defendant.

COMES NOW the Plaintiffs above named, by and through Plaintiffs' attorneys,
Harold D. Carr, and Adam C. Cox for a cause of action against Defendants and each of them
allege as follows:

I. PLAINTIFF

1.1 At all times material hereto, Plaintiffs Genevieve T. Porter and STEVEN
PORTER were married residents of Lewis County, Washington.

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II. DEFENDANTS

2.1 At all times material hereto, Defendant, WALMART INC., was a Delaware corporation conducting business in Chehalis, Lewis County, State of Washington, which is the legal owner and possessor of real property and improvements located at 1601 NW Louisiana Ave, Chehalis, WA 98532 (LEWIS County Parcel # 750030404097) as Store #2249. WALMART INC. is assigned a Washington UBI number 601336273 with its registered agent for service of process as CT Corporation System, 711 Capitol Way S., Suite 204, Olympia, WA, 98501-1267.

2.2 Upon information and belief, at all times material hereto, defendants JOHN DOE MANAGER and JANE DOE MANAGER were husband and wife residing in Lewis County, Washington. Defendant JOHN DOE or JANE DOE MANAGER was the Manager of Walmart Store #2249 at the time of Plaintiff's fall. Fictitious Defendants, "JOHN DOE MANAGER and JANE DOE MANAGER", whose true name and capacity are unknown to Plaintiff, were employees, agents, and/or representatives of WALMART INC., acting within the course and scope of their respective employment. Plaintiff therefore sues these Defendants by such fictitious names. Plaintiff reserves the right to amend the Complaint to state the true name and capacity of said JOHN DOE MANAGER and JANE DOE MANAGER.

2.3 Upon information and belief, at all times material hereto, defendant JANE DOE ASSISTANT MANAGER and JOHN DOE ASSISTANT MANAGER were wife and husband residing in Lewis County, Washington. Defendant JANE DOE ASSISTANT MANAGER was the Assistant Manager of Walmart Store #2249 at the time of Plaintiff's

1 fall. Fictitious Defendants, JANE DOE ASSISTANT MANAGER and JOHN DOE
2 ASSISTANT MANAGER, whose true name and capacity are unknown to Plaintiff, were
3 employees, agents, and/or representatives of WALMART INC., acting within the course and
4 scope of their respective employment. Plaintiff therefore sues these Defendants by such
5 fictitious names. Plaintiff reserves the right to amend the Complaint to state the true name
6 and capacity of said JANE DOE ASSISTANT MANAGER and JOHN DOE ASSISTANT
7 MANAGER.

8 2.4 Defendant, "JOHN DOE EMPLOYEES 1- 5", on information and belief were
9 residents of Washington, at all times relevant and material to this Complaint. Fictitious
10 Defendants, "JOHN DOE EMPLOYEES 1-5", whose true name and capacity are unknown
11 to Plaintiff, were employees, agents, and/or representatives of WALMART INC., acting
12 within the course and scope of their respective employment at or on behalf of Walmart Store
13 #2249. Plaintiff therefore sues these Defendants by such fictitious names. Plaintiff reserves
14 the right to amend the Complaint to state the true name and capacity of said "JOHN DOE
15 EMPLOYEES 1-5".

16 III. JURISDICTION AND VENUE

17 3.1 Plaintiffs, GENEVIEVE T. PORTER and STEVEN PORTER, are residents
18 of Chehalis, Lewis County, Washington.

19 3.2 Personal jurisdiction exists over Defendants. The "tortious act" and omissions
20 giving rise to and causing Plaintiffs' injury claims occurred in Lewis County, Washington
21 and because Defendants conduct business in Chehalis, Lewis County, Washington.

22 3.3 Venue is proper in Lewis County, Washington because the Defendant,
23

1 WALMART INC., owns, uses, maintains, possesses, and controls property in Chehalis,
2 Lewis County, Washington, transacts business in Lewis County, Washington, and directs,
3 controls, and monitors training, supervision, and oversight of its employees, agents, and
4 representatives, including, JOHN DOE EMPLOYEES 1-5, and the Defendants' acts and
5 omissions giving rise to and causing Plaintiff GENEVIEVE T. PORTER's injuries and
6 damages occurred in Lewis County, Washington, and the losses suffered by her husband
7 STEVEN PORTER. RCW 4.12.020(3); RCW 4.12.025(1).

8 IV. FACTS

9 4.1 That on or about Friday, August 2, 2019, Plaintiff, GENEVIEVE T. PORTER,
10 was shopping at the Wal-Mart Supercenter store in Chehalis, WA designated as Walmart
11 store #2249.

12 4.2 The Chehalis Walmart Store, like the more than 5,000 other stores and clubs
13 operated directly or indirectly by Walmart, Inc. across the nation, is open to the public for
14 the self-service sale of products for profit.

15 4.3 At all times relevant and material to this lawsuit, Plaintiff GENEVIEVE T.
16 PORTER was an invitee at the property.

17 4.4 While shopping in Walmart Store #2249, GENEVIEVE T. PORTER
18 encountered one or more dangerous and/or hazardous conditions, or instrumentalities,
19 caused, created, controlled, or operated by one or more JOHN DOE EMPLOYEES, including
20 an unmarked wet floor, inside the entrance of the store next, positioned next to a water
21 dispenser, with no floor mat present. The below photograph shows the entrance, but with
22 changed conditions since the date of the incident (including the presence of a floor mat):
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4.5 As a result of the dangerous and/or hazardous conditions or instrumentalities then existing, created, and/or permitted to remain upon the store premises due to the negligence of defendants, and/or the absence of applicable guarding, warnings, or abatement,

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1 arising to negligence on the part of Defendants, GENEVIEVE T. PORTER fell and sustained
2 injuries.

3 4.6 On or about Friday, August 2, 2019, Plaintiff GENEVIEVE T. PORTER fell
4 due the negligence, errors, and omissions of one or more "JOHN DOE EMPLOYEES." As
5 a result of the fall, Plaintiff GENEVIEVE T. PORTER suffered injuries and damages.

6 V. NEGLIGENCE

7 5.1 Under the doctrine of respondeat superior, WALMART INC. is liable for the
8 acts and omissions of its employees, agents, and representatives, including but not limited to
9 JOHN DOE MANAGER, JANE DOE ASSISTANT MANAGER, and JOHN DOE
10 EMPLOYEES 1-5 which caused harm to its business invitee, GENEVIEVE T. PORTER, in
11 the operation of Walmart's self-service store.

12 5.2 Defendant JOHN DOE MANAGER and JANE DOE ASSISTANT
13 MANAGER, the manager and assistant manager of store #2249 were negligent in failing to
14 perform their respective duties to maintain store #2249 reasonably safe for their invitees,
15 permitting insufficient policies, procedures, training, supervision, and enforcement of
16 employees, agents, and representatives, in failing to take reasonable precautions to protect
17 Walmart's invitees from foreseeable harm by allowing employees to engage-in and create
18 hazardous and/or dangerous practices and conditions, and failing to warn shoppers of
19 hazardous and dangerous practices and conditions created by Walmart, its agents,
20 representatives, or employees, or permitted to remain on the premises.

21 5.3 Defendants were the owners and occupiers of the premises and knew of the
22 hazardous and dangerous conditions on the premises because it created the conditions, or
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1 failed to exercise ordinary care to discover the conditions, and should have realized that it
2 involved an unreasonable risk of harm to business invitees and customers, including
3 GENEVIEVE T. PORTER. Defendants should have expected that GENEVIEVE T.
4 PORTER would not discover or realize the danger or would fail to protect herself against it,
5 and failed to exercise ordinary care to protect GENEVIEVE T. PORTER and other customers
6 against the danger, hazard, and unsafe condition. Moreover, the method of operation of the
7 business was such that Defendants were on notice of the existence, nature, cause, extent,
8 scope, and etiology of the dangerous, hazardous, or unsafe conditions.

9 5.4 Upon information and belief, Defendant WALMART INC. created, installed,
10 maintained, and controlled a video-surveillance system at store #2249 which recorded
11 Plaintiff's fall, as well as recorded her entry, appearance while on the premises, and mode
12 and method of exiting the store. Additionally, upon information and belief, WALMART
13 INC. created, kept, maintained, and controlled personnel logs, employment files,
14 investigation files, and necessary materials allowing for the identification of employees,
15 agents, and representatives, with discoverable knowledge or information pertaining to the
16 claims, injuries, and damages set forth by Plaintiff. WALMART INC. had actual and
17 constructive knowledge of the essential nature of preserving, maintaining, and protecting the
18 recorded surveillance video of Store #2249 from the date of the incident, and materials
19 relating to the claims, injuries, and damages. WALMART INC. had a duty to preserve,
20 maintain, and protect recorded surveillance video of Store #2249 from the date of the
21 incident, and materials relating to the claims, injuries, and damages. To the extent that
22 Defendants assert affirmative defenses such that GENEVIEVE PORTER is at fault, there are
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1 non-parties at fault, GENEVIEVE PORTER had pre-existing symptomatic conditions that
2 impacted her mobility, GENEVIEVE PORTER assumed the risk of harm, or GENEVIEVE
3 PORTER unreasonably failed to mitigate her damages, it is presumed WALMART INC.
4 should have preserved the surveillance/imaging system to demonstrate the existence of such
5 facts and evidence, which would have been exclusively within its possession and control.

6 5.5 On the date of the occurrence, Walmart store #2249 was under the ownership,
7 occupation, management, possession, control, supervision, and care, of WALMART INC.,
8 JOHN DOE MANAGER, and JANE DOE ASSISTANT MANAGER and were responsible
9 for policies, practices, actions, hazards, and conditions at said Walmart in Chehalis, WA.
10 The Defendants, themselves, and by and through their agents, servants, and employees, owed
11 Plaintiff a duty to provide and maintain safe premises for the benefit of its invitees.
12 Defendants also had a duty to:

- 13 (a) Provide safe and adequate maintenance of the premises and grounds;
- 14 (b) Provide invitees with warning signs regarding unsafe areas and hidden
15 dangers;
- 16 (c) Have a system to provide warnings to invitees by roping off, taping
17 off and or/or utilizing safety cones to mark unsafe areas and hidden dangers;
- 18 (d) Have a system in place to inspect the premises for unsafe conditions;
- 19 (e) Inspect the premises for unsafe conditions once its employees become
20 aware or should have become aware of potential unsafe conditions;
- 21 (f) eliminate unsafe conditions on its premises once its employees
22 become aware or should become aware of unsafe conditions; and

(g) guard invitees against unreasonable hazards and conditions created in whole or in part by Walmart employees, agents, and representatives, and or conditions created in whole or in part by entrants or invitees of which Defendants had actual or constructive knowledge.

5.6 Defendants breached their duties as set forth in paragraphs 4.4 – 4.6, and 5.1 – 5.5.

5.7 As a direct and proximate cause of Defendants' breach of their duties as set forth in paragraphs 4.4 – 5.6, Plaintiff GENEVIEVE T. PORTER, suffered personal injuries and damages.

5.8 Defendants had actual and/or constructive notice of the defects and negligence alleged in paragraphs 4.4 – 5.6.

VI. NO COMPARATIVE FAULT

6.1 Plaintiff, GENEVIEVE T. PORTER, was without negligence of any kind or nature whatsoever and did not contribute to her own injuries or damages in any way.

VII. DAMAGES

7.1 As a direct and proximate result of the aforementioned policies, practices, procedures, acts, omissions, and negligence of Defendants, Plaintiff, GENEVIEVE T. PORTER, suffered personal injuries with resulting pain and suffering, personal damage, disability, emotional trauma, emotional distress, and loss of enjoyment of life, harms, losses, and other damages all believed to be permanent and which shall be described with greater particularity and proven at the time of trial.

7.2 As a direct and proximate result of the aforementioned policies, practices,

1 procedures, acts, omissions, and negligence of Defendants, Plaintiff, GENEVIEVE T.
2 PORTER, has been required to seek medical and healthcare treatments, will continue to
3 require medical and healthcare treatments, medical expenses, out of pocket expenses, and
4 other harms, losses, special damages and general damages of a nature and amount all of which
5 shall be described with greater particularity and proven at the time of trial.

6 7.3 As a direct and proximate result of the aforementioned policies, practices,
7 procedures, acts, omissions, and negligence of Defendants, STEVEN PORTER suffered a
8 loss of the care, companionship, society, love, and affection of his spouse and tortious
9 interference, injury, harm and damage to their relationship, and is entitled to be compensated
10 therefore.

11 7.4 None of the individual Defendants are members of the armed forces of the
12 United States.

13 LIMITED PHYSICIAN/PATIENT WAIVER

14 Plaintiff hereby waives the physician-patient privilege ONLY to the extent required
15 by RCW 5.60.060, as limited by the Plaintiff's constitutional rights of privacy, contractual
16 rights of privacy, and the ethical obligation of physicians and attorneys not to engage in ex
17 parte contact between a treating physician and the patient's legal adversaries.

18 DEMAND FOR JURY TRIAL AND RELIEF

19 WHEREFORE, Plaintiff demands a jury trial on all disputed issues, and prays for
20 judgment against the Defendants, and each of them, jointly and severally, as follows:

- 21 1. For judgment in such amount as shall be proven at the time of trial.
- 22 2. For pre-judgment interest at the statutory rate on all items of special

1 damages including, without limitation, expenses of medical care and
2 treatment, property damage and loss of use of vehicle.

3 3. For an award of attorneys fees and costs of suit incurred herein.

4 4. For such other and further relief as the Court may deem just and equitable.

5 DATED this 20 day of April, 2022.

6 HAROLD D. CARR, P.S.

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8 HAROLD CARR, WSBA #11767

9 ADAM C. COX, WSBA #35677

10 Attorney for Plaintiff